IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5959 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

BHANUBHAI J SHAH

Versus

ADARSH COOPERATIVE BANK LTD.

Appearance:

MR PV NANAVATI for Petitioner

MR RAJENDRA PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 07/04/2000

ORAL JUDGEMENT

Being aggrieved by the order dated 30.4.1990 passed by the Gujarat Co-operative Tribunal, Ahmedabad, in Appeal No. 23/89 so far as the said order is against

the petitioner, the petitioner has approached this court with a prayer that the said order be quashed and set aside.

2. The facts and circumstances in which the present petition has been filed are as under:-

3. Arbitration Suit No. 1219/81 was filed by the repsondent-Bank against the petitioner for recovery of Rs. 73,863.80. The petitioner had resisted the suit by filing his written statement raising several contentions and, ultimately, the Board of Nominee had decreed the said suit and had directed that the petitioner should pay a sum of Rs. 73,103.43 with interest thereon at the rate of 18% from the date on which the suit was filed till the date of realisation of the said amount, by a judgment and award dated 29.9.1989.

4. Being aggrieved by the said judgement, the petitioner had filed an appeal being Appeal No. 23/89 before the Board of Nominee, Ahmedabad. After hearing the concerned parties, the appeal was partly allowed to the extent of Rs. 27,200/- by an order dated 30.4.1990. Being aggrieved by the said order passed by the Board of Nominee, this petition has been filed by the petitioner.

5. I have heard learned advocate Shri P.V. Nanavati appearing for the petitioner, who has submitted that the Tribunal did not consider certain claims raised before the Tribunal and did not give credit of the amount which had been paid by the petitioner. By overlooking the said entries, the Tribunal had erred by allowing the appeal only to certain extent. It is his case that the appeal ought to have been allowed fully.

6. I have heard learned advocate Shri Nanavati and have also perused the impugned orders. Upon perusal of the impugned order, it is clear that the Tribunal had considered all the averments and submissions made by the petitioner and only after considering all relevant facts it had come to the conclusion that the petitioner had to pay the amount as decreed in arbitration suit No. 1219/81 as reduced by Rs. 27,200/-. The Tribunal had rightly considered the submissions made on behalf of the petitioner with regard to the excess interest awarded in the suit and therefore a sum of Rs. 27,200/- was reduced from the decretal amount. For arriving at the said figure, the Tribunal had considered all factual aspects in the matter and the learned advocate could not point out any illegality in the appellate order.

7. Upon perusal of the impugned orders, it appears that the concurrent findings arrived at by the authorities below are just and proper and I do not find any perversity or patent illegality committed by any of the authorities. In view of the said fact and in view of the law laid down by the Hon'ble Supreme Court in case of Mohd. Yunus v. Mohd. Mustaquim, 1984 SC 38, and in view of the fact that the inferior courts and the Tribunal had functioned within the limits and authority, I do not think that the petitioner deserves any of the reliefs prayed for in the petition.

8. In the circumstances, the petition is dismissed with no order as to costs. Rule is discharged.

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